Office-Supreme Court, U.S.
FILED
AUG 1 1968
JOHN F. DAVIS, CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 257

EX PARTE, IN THE MATTER OF THE PETITION OF
OLIVER LEE YORK AND
MARGARET EDNA YORK
FOR ADOPTION OF A FEMALE INFANT

On Petition for a Writ of Certiorari to The United States Court of Appeals for the District of Columbia Circuit

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

LEO N. GORMAN,
Assistant Corporation Counsel, D. C.

Attorneys for Respondent,
District Building,
Washington, D. C. 20004

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QUESTIONS PRESENTED

1. Where, in a case involving the enforcement of a law of purely local application, the United States Court of Appeals for the District of Columbia Circuit denied discretionary review of the judgment of the District of Columbia Court of Appeals, was such case ever *in* the Court of Appeals for purposes of review on writ of certiorari under 28 U. S. C. § 1254?

2. Were petitioners in an adoption proceeding denied due process of law when, absent the required showing that inspection of the investigative report of the Department of Public Welfare would promote the welfare of the prospective adoptee, the court refused their request to inspect such report?

3. Were petitioners denied due process of law when the court failed *sua sponte* to appoint a guardian *ad litem* to represent the interests of the prospective adoptee?

COUNTER-STATEMENT OF THE CASE

Petitioners, husband and wife, petitioned the District of Columbia Court of General Sessions, Domestic Relations Branch, for the adoption of a female infant, a ward of the District of Columbia Department of Public Welfare, who had been placed in petitioners' home on a foster care basis. Thereafter, the trial court conducted a two-day hearing on the petition, at which it appeared that the Department of Public Welfare, after a full investigation which reflected adversely upon petitioners' suitability as adoptive parents, removed the child from petitioners' home and declined to consent to the adoption. (R. 108.) During the course of the hearing, petitioners requested the court to permit an examination of the investigative report of the Department of Public Welfare, prepared pursuant to D. C. Code, § 16-307 (1967). The request was denied, but the substance of the report was, nevertheless, stated to petitioners. (R. 101-106.) The evidence adduced disclosed that petitioners' marital relationship had deteriorated and that, in the years since petitioners had last been investigated, serious personality defects had developed in both husband and wife (R. 147-150, 152-153, 168-172, 177, 186, 206-208, 212-213, 274, 277-282). At the conclusion of the hearing, the court denied the petition for adoption (R. 334).

Petitioners appealed to the District of Columbia Court of Appeals, contending that the trial court erred (1) in refusing to allow petitioners or their counsel to examine the investigative report of the Department of Public Welfare and (2) in not *sua sponte* appointing a guardian *ad litem* for the prospective adoptee. On January 19, 1968, the District of Columbia Court of Appeals unanimously rejected both contentions and affirmed the judgment of trial court (petitioners' appendix D). Pursuant to D. C.

Code, § 11-321 (1967), petitioners then filed a petition for the allowance of an appeal in the United States Court of Appeals for the District of Columbia Circuit. On April 4, 1968, the United States Court of Appeals entered an order denying the petition for allowance of an appeal (petitioners' appendix E). Petitioners then filed in this Court a petition for a writ of certiorari.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any substantial federal question warranting the exercise of this Court's jurisdiction to review on writ of certiorari.

The jurisdiction of the Supreme Court to review on writ of certiorari is clearly defined by 28 U. S. C. § 1254, which provides in pertinent part that:

> "Cases *in the courts of appeals* may be reviewed by the Supreme Court by the following methods:
> "(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * * ." [Emphasis added.]

In as much as the United States Court of Appeals denied the petition to it for allowance of an appeal from the judgment of the District of Columbia Court of Appeals, it is quite apparent that this case was never *in* a court of appeals for purposes of review on writ of certiorari under 28 U. S. C. § 1254, *supra*. See *Ferguson* v. *District of Columbia*, 270 U. S. 633 (1926), where a petition for a writ of certiorari to review the order of the Court of Appeals of the District of Columbia (now the United States Court of Appeals for the District of Columbia Circuit) denying a writ of error to the Police Court of the District of Columbia (now the District of Columbia Court of General Sessions) was denied by the Supreme Court for want of jurisdiction under § 240 of the Judicial Code, as amended

by the Act of February 13, 1925, Ch. 229, § 1(a), 43 Stat. 938 (now 28 U. S. C. § 1254).

But even if this case can be considered a case *in* the court appeals within the purview of 28 U. S. C. § 1254, *supra,* it is clear from the record that it involves nothing more than the application of statutes of purely local concern respecting procedures in adoption cases. This Court has made it clear on more than one occasion that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of egregious error, exercise its jurisdiction. *Del Vecchio* v. *Bowers,* 296 U. S. 280, 285 (1935); *District of Columbia* v. *Pace,* 320 U. S. 698, 702 (1944); *Busby* v. *Electric Utilities Union,* 323 U. S. 72, 74-75 (1944); *Fisher v. United States,* 328 U. S. 463, 476-477 (1946); *Griffin* v. *United States,* 336 U. S. 704, 717-718 (1949), rehearing denied, 337 U. S. 921 (1949). Not only has there been no showing of egregious error, there has been no showing of any error.

A

Petitioners' first contention is that they were denied due process of law when the trial court refused to permit them or their counsel to inspect the investigative report of the Department of Public Welfare.

In this connection, D. C. Code, § 16-311 (1967), provides in part:

> "From and after the filing of the petition, records and papers in adoption proceedings shall be sealed. They may not be inspected by any person, including the parties to the proceeding, except upon order of the court, and *only then when the court is satisfied that the welfare of the child will thereby be promoted or protected.* * * * " [Emphasis added.]

In order to afford petitioners an opportunity to establish their standing to inspect the investigative report, the trial court permitted the Department of Public Welfare official who compiled the report to testify regarding the nature of the allegations contained therein (R. 101-106). Petitioners then called as witnesses several persons who had been interviewed by Department officials during the background investigation. These witnesses, all close neighbors of the petitioners, testimonially confirmed the derogatory information contained in the investigative report. (R. 147-150, 152-153, 168-172, 177, 186, 206-208, 212-213, 274, 277-282.)

The case of *In re Blumenthal's Adoption,* 346 F. 2d 783 (3rd Cir., 1965) (cited at p. 12 of petitioners' brief), is of no aid to petitioners. Under the circumstances of that case, the court stated that the confidential report of the Welfare Department "* * * should have been subject to examination, to objection, to contradiction. * * *" (346 F. 2d at 789.) There, however, the question of the contents of the Welfare Department report was never raised at the hearing. Such a situation is in sharp contrast with the record in the instant case from which it appears that petitioners were told the substance of the investigative report and were permitted to call to the stand and examine the persons who supplied the information contained in such report.

In any event, the adoption could not have been granted without the written consent of the Department of Public Welfare, the prospective adoptee's legal guardian (D. C. Code, § 16-304(a) (1967)), unless the court found that such consent was being "withheld contrary to the best interests of the child." D. C. Code, § 16-304(e) (1967). The Department of Public Welfare refused to consent to the adoption, and, in view of testimony regarding petitioners' personality defects, it cannot reasonably be contended that the trial court abused its discretion in not finding that the Depart-

ment's consent was being withheld contrary to the best interests of the prospective adoptee. (See petitioners' appendix C-2, footnote 6.)

At page 13 of their brief, petitioners assert that the trial court denied them "a hearing on the withholding of consent." The question of the withholding of consent to adoption was never specifically raised in the trial court. However, it is clear, as the District of Columbia Court of Appeals noted, that the two-day hearing was held for the purpose of determining "* * * whether, in the best interests of the child, it [the trial court] ought to grant appellants' petition despite the withholding of the necessary consent. * * *" (Petitioners' appendix D-2, D-3.)

B

Petitioners' second contention is that they were denied due process of law when the trial court did not *sua sponte* appoint a guardian *ad litem* to represent the interests of the prospective adoptee.

The law is clear that a guardian *ad litem* need not be appointed in every adoption case,[1] and that, in an adversary proceeding, the prospective adoptee's interests may be adequately represented and protected by the adversaries. *In re Adoption of a Minor,* 74 App. D. C. 50, 120 F.2d 720 (1941); see also *Boone v. Boone,* 76 U. S. App. D. C. 399, 132 F. 2d 14 (1942), cert. denied, 319 U. S. 762 (1943).

Unquestionably, the hearing before the court below on the adoption petition was adversary in character. The adversaries were petitioners, the prospective adoptors, and the Department of Public Welfare, the legal guardian of the prospective adoptee. Each was contending for the custody of the prospective adoptee; each was represented

[1] Rule 5(b) of the Rules of the Domestic Relations Branch, Court of General Sessions, provides in part: "In any domestic relations case involving the * * * adoption of minor children the Court *may* appoint a guardian a d l i t e m to investigate the matter and report in writing to the Court. * * *" [Emphasis added.]

by counsel; and each called numerous witnesses who were extensively examined and cross-examined. Clearly, it can be said of the proceeding that: "All factors in respect of the best interests of the adoptee * * * were tested in the crucible of a thorough hearing, in which the adoption was vigorously presented and vigorously contested and the cross-examinations were rigorous." *In re Adoption of a Minor, supra,* 74 App. D. C. at 50, 120 F. 2d at 721.

Moreover, petitioners do not now even suggest that there are any relevant facts which were not, but might have been, presented to the trial court had a guardian *ad litem* been appointed.

CONCLUSION

It is clear from the foregoing that petitioners have utterly failed to present any ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The petition for writ of certiorari should, therefore, be denied.

Respectfully submitted,

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

LEO N. GORMAN,
Assistant Corporation Counsel D. C.

Attorneys for Appellants,
District Building,
Washington, D. C. 20004